U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33516671

Date: NOV. 26, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a lead marketing specialist, seeks classification as an individual of extraordinary ability in business. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the initial evidentiary requirements under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

On appeal, the Petitioner claims that the Director mischaracterized some of her documentation and reasserts her eligibility for the classification. Upon review, we conclude that the Director's request for evidence (RFE) and decision notice did not adequately address the claimed evidentiary criteria or analyze the evidence provided.

An officer must fully explain the reasons for a denial so that the affected party has a fair opportunity to contest the decision and we have an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i) (providing that the director's decision must explain the specific reasons for denial); *c.f. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Furthermore, an RFE must give the affected party notice of the proposed grounds of denial to give them adequate notice and sufficient information to respond. 8 C.F.R. § 103.2(b)(8)(iv); *see generally* 1 *USCIS Policy Manual* E.6(F)(3), https://www.uscis.gov/policy-manual (stating that RFEs should identify why the provided evidence is insufficient).

Both in the RFE and denial, the Director stated that various documents in the record did not establish eligibility without adequately discussing the contents of those documents or explaining why they were insufficient. For example, in the RFE, the Director dismissed evidence the Petitioner submitted for the lead or critical role criterion, in part, by categorically stating that someone classified as a self-employed, temporary or contractual worker cannot meet this criterion. However, the Director did not further explain or support his statement with legal authorities or guidance. Similarly in the denial, the Director repeatedly dismissed the Petitioner's evidence by stating:

> [T]he submitted evidence (e.g. iterating evidence, minimized digital photos) appears to be digital, self-made copies of documentary evidence that were reduced or altered, but such documentation is inadmissible. You did not submit ordinary legible photocopies of the original documentary evidence . . . reflecting its original size. Thus, the evidence holds not probative value.

While illegible evidence is not probative, there is no regulation banning the submission of photocopies that have had their size altered. Furthermore, upon review, the vast majority of the Petitioner's evidence is legible. It is therefore not apparent what documents the Director is referring to with this statement, which does not afford the Petitioner an adequate opportunity to respond.

At times, the Director also mischaracterized and overlooked evidence. For example, when discussing the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the RFE and denial dismissed a letter from the Eastern European Marketing Association, stating that it only discussed committee membership rather than membership in an association. However, the letter in question did discuss the requirements of membership in the association. Furthermore, while the RFE and denial stated that the Petitioner did not provide evidence showing that either of the associations she is a member of requires outstanding achievements of its members as judged by experts in the field, she submitted letters, meeting minutes, and member biographies which address those issues. Additionally, the denial stated that associations which only require fees or a certain education or experience level for membership do not qualify for the membership criterion, but neither of the associations in the Petitioner's evidence meet this description.

When addressing the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Director stated that the Petitioner did not provide materials establishing that any of the articles were published in professional or major trade publications, when, for example, the record includes information indicating that magazines such as *PR in Russia* and *Adindex* are professional publications in the public relations field. Furthermore, the Director cited *Braga v. Poulos*, 2007 WL 9229758, at *7 (C.D. Cal. Jul. 6, 2007), *aff'd*, 317 Fed. Appx. 680 (9th Cir. 2009), an unpublished federal district court case,[1] to dismiss circulation data in the record by asserting that USCIS was not obliged to accept publications' "self-serving assertions." However, in *Braga*, the "self-serving" assertion in question was an unsupported claim to be "The #1 Magazine of Mixed Martial Arts!", not concrete information such as circulation

[1] Federal district court cases, as well as unpublished cases, are only binding on the parties before them. However, such cases may be cited as persuasive authority. *See, e.g., Matter of K-S-*, 20 I&N Dec. 715, 718-19 (holding that federal district court decisions are not binding on the Board of Immigration Appeals, an administrative appellate authority); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009) (noting that unpublished opinions are not binding precedent but may be persuasive on the legal issues).

data. In this and other instances, the Director categorically dismissed the Petitioner's evidence instead of discussing its contents.

Because the Director's decision did not adequately address the record, we will remand this matter. On remand, the Director should specifically address the contents of the documents provided by the Petitioner and determine whether the evidence meets the criteria, and if does not, clearly explain why the evidence is insufficient. If the Director determines that the Petitioner satisfies at least three criteria after re-examining the evidence, the Director should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and whether the record demonstrates that the Petitioner is one of the small percentage at the very top of the field of endeavor, and that the Petitioner's achievements have been recognized in the field through extensive documentation. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also* Kazarian v. USCIS, 596 F.3d 1115, 1119-20 (9th Cir. 2010). The Director may also request any evidence considered relevant to the new decision. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.